

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

TERRANCE MONTAGUE, : CIVIL NO. 1:CV-00-0995  
Plaintiff :  
v. : Magistrate Judge Smyth  
ROBERT W. MEYERS, et al :  
Defendants :

**ORIGINAL**

FILED  
HARRISBURG

SEP 17 2001

MARY E. D'ANDREA, CLERK

PLAINTIFF'S OBJECTIONS TO DEFENDANTS'  
MOTION FOR INVOLUNTARY DISMISSAL

PLAINTIFF, TERRANCE MONTAGUE FILES THIS OBJECTIONS ~~TO~~ DEFENDANTS'  
MOTION FOR INVOLUNTARY DISMISSAL FOR THE FOLLOWING REASONS:

1. I, TERRANCE MONTAGUE AM AN INMATE INCARCERATED AT SCI-ROCKVIEW, WHERE INMATE HAVE NO STAMPS, AND INMATE MAIL IS PLACED IN INSTITUTIONAL "INMATE OUT GOING MAILBOX, WITHOUT A STAMP, TO BE MAILED BY PRISON OFFICIALS.

2. I, TRIED TO MAIL SAID EXHIBITS TO DEFENDANTS BEFORE SAID DUE DATE BY PLACING SAME IN INMATE OUT GOING MAILBOX 3 TIMES, WHERE SAID MAILED EXHIBITS WERE RETURNED TO ME 2 TIMES, AND NOT MAILED UNTIL THE THIRD TIME, HOPEFULLY.

3. THERE IS A SPECIAL RULE FOR PRO SE PRISONER LITIGANTS WHO FILE LEGAL PAPERS BY MAIL. THE SUPREME COURT HELD THAT A PRO SE PRISONER'S NOTICE OF APPEAL IS DEEMED FILED ON THE DAY IT IS DELIVERED FOR MAILING TO PRISON AUTHORITIES, RATHER THAN APPLYING THE USUAL RULE THAT IT IS FILED THE DAY IT ARRIVES IN COURT. THE COURT REASONED THAT THE LITIGANT LOSES CONTROL OVER THE NOTICE AS SOON AS HE TURNS IT OVER TO PRISON PERSONNEL. HOUSTON V. LACK, 437 U.S. 256, 273-76, 109 S.CT. 2379 (1988). THE LOWER COURTS HAVE GENERALLY APPLIED THIS RULE TO OTHER LITIGATION DEADLINES AS WELL. GARVEY V. VAUGHN, 993 F.2D 776 (11TH CIR. 1993)(CIVIL RIGHTS AND FEDERAL TORT CLAIM ACT COMPLAINTS); FAILE V. UPJOHN CO., 988 F.2D 985, 989 (9TH CIR. 1993)(DISCOVERY RESPONSES); SIMMONS V. GHENTG, 970 F.2D 392,393 (7TH CIR.1992)(MOTION UNDER RULE 59(E), FED.R.CIV.P.); LEWIS V. RICHMOND CITY POLICY DEPT., 947 F.2D 733, 735-36 (4TH CIR. 1991)(CIVIL RIGHTS COMPLAINT); DUNN V. WHITE, 880 F.2D 1188, 1190 (10TH CIR. 1989)(FILING OF OBJECTIONS TO MAGISTRATE'S REPORT AND RECOMMENDATION), CERT. DENIED, 493 U.S. 1059 (1990); SMITH V. EVANS, 853 F.2D 155, 161-62 (3RD CIR. 1988)(RULE 59(E)MOTION). THE RULE ONLY APPLIES WHEN THE PRISONER TURNS HIS PAPERS OVER TO PRISON OFFICIALS, AND NOT WHEN HE PLACES IT IN A PUBLIC MAILBOX, MILLER V. SUMNER, 921 F.2D 202, 203-04 (9TH CIR. 1990), OR SENDS IT TO SOME ONE ELSE FOR MAILING, WILDER V. CHAIRMAN OF CENTRAL CLASSIFICATION BOARD, 926 F.2D 367, 370-71 (4TH CIR.), CERT. DENIED, 112 S.CT. 109 (1991).

4. I VERIFY THAT THE STATEMENTS MADE IN THIS MOTION ARE TRUE AND CORRECT. I UNDERSTAND THAT FALSE STATEMENTS HEREIN ARE MADE SUBJECT TO THE PENALTIES OF 18 PA.C.S. §4904, RELATING TO UNSWORN FALSIFICATION TO AUTHORITIES.

Dated: 9-13-01

Terrance Montague  
Terrance Montague, BZ-2761  
Box A, Bellefonte, PA 16823-0820

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

TERRANCE MONTAGUE,  
V. PLAINTIFF  
ROBERT W. MEYERS, ET AL  
DEFENDANTS

CIVIL NO. 1: CV-00-0895  
(MAGISTRATE Judge Smyser)

CERTIFICATE OF SERVICE

I TERRANCE MONTAGUE HEREBY SERVED A TRUE AND CORRECT  
COPY OF PLAINTIFF'S OBJECTIONS TO DEFENDANTS'  
MOTION FOR INVOLUNTARY DISMISSAL ON THE  
FOLLOWING BY PLACING IT IN THE INMATE OUTGOING  
MAILBOX ON 9-13-01

GREGORY R. NEUHAUSER  
OFFICE OF ATTORNEY GENERAL  
COMMONWEALTH OF PENNSYLVANIA  
STRAWBERRY SQUARE  
HARRISBURG, PA 17120

CLERK'S OF COURT  
U.S. DISTRICT COURT  
228 WALNUT STREET  
P.O. BOX 983  
HARRISBURG, PA 17108

DATE: 9-13-01

Terrance Montague  
TERRANCE MONTAGUE  
S.C.I. ROCKVIEW  
BOX A  
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